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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 24.07.2019

+ **MAC.APP. 1045/2018**

SANWAR MAL & ORS

..... Appellants

Through: Mr. Anshuman Bal, Advocate.

versus

NEW INDIA ASSURANCE CO LTD & ORS

..... Respondents

Through: Mr. R.K. Tripathi, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

The appellants impugn the award of compensation on the ground that it is on the lesser side. It is the appellants' case that the deceased was earning Rs. 16,000/- per month as a Physical Education Teacher in a school and had produced a salary certificate in this regard. Upon examination of the said salary certificate (Exhibit PW-4), the learned Tribunal had found that the salary of Rs. 16,000/- included Rs.6,000/- for extra classes. In fact, the salary was only Rs. 10,000/- which was taken into consideration and on it 30% was added towards loss of future prospects.

The learned Tribunal while considering the above issue held *inter-alia* as under:-

“As far as the income of the deceased is concerned, PW-2 has stated that the deceased was working, as Physical Education Teacher in their school since 2008 till the date of accident i.e. 31.07.2016. He has brought the attendance

register Ex.PW2/1 (colly.), salary register EX.PW2/2 (colly.). He has also brought extra class salary register EX.PW2/3 (colly.) and the salary certificate Ex.PW2/4. During cross-examination, he denied the suggestion that the salary register as brought by him does not show the details of salary of the deceased Santra Devi. As per the salary certificate Ex.PW2/4 the salary of the deceased was shown as Rs. 16,000/- p.m. which includes Rs. 6,000/- as salary for extra class. As per record she has been paid extra salary only for three months i.e. from May to July, 2016. As per salary register Ex.PW2/2 her monthly salary was Rs. 10,000/-. Therefore, the salary of the deceased for calculating the loss of dependency is taken as Rs. 10,000/- p.m. After adding future prospects @ 30%, the monthly income of the "deceased comes to Rs. 13,000/-. She was survived by her husband, one son and one daughter. Therefore, one-third is to be deducted towards personal and living expenses. After deduction, the monthly income of the deceased comes to Rs. 8,666/-. Thus, the loss of dependency comes to Rs. 13,51,896/- (Rs. 8,666 x 12 X 13) which is rounded off to Rs. 13,52,000/-. I therefore, award Rs. 13,52,000/- to the petitioner towards loss of dependency."

The aforementioned documents i.e. the Salary Certificate, the Extra Class Salary Register and the Salary Register speak for themselves apropos the actual fixed salary of the deceased i.e. Rs. 10,000/- per month. The payment for extra classes, would be an interim ad hoc arrangement, to cater to the exigency of the school. He was paid extra classes salary only for the months of May, June and July 2016. These extra monies were not a part of his regular salary but were conditional on his discharging additional duties/ extra classes, in exigent circumstances. Therefore, remuneration for extra classes was rightly excluded from the salary.

The Court finds no reason to interfere with the impugned order. The

appeal is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

JULY 24, 2019

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